

Remarks

All of the claims have been rejected as being obvious over Chiantelassa, U.S. Patent No. 2,914,219 in view of Ohashi et al., U.S. Patent No. 6,487,856. The independent claims have been amended and it is believed that these amendments overcome this rejection.

Claim 7 has been amended to require a first charge pump mounted on the second surface of the end cap and the system ports extending into one of the sides of the end cap. This claim also requires that the system ports be parallel to the longitudinal axis of the input shaft. In the Chintelassa '219 patent, the system ports 30 and 31 are perpendicular to the input shaft 8'. The Examiner relied on inlet and outlet ports 10 and 11 in pump housing 4. However, these ports are not in the side of an end cap and there is no indication how one would modify the Chintelassa '219 patent design to make such ports parallel to the longitudinal axis of the input shaft. The parallel system ports shown in pump housing 4 could not be used in this design because of the presence of the charge pump on the second surface of the housing, as now required in claim 7. Furthermore, one cannot simply rotate the end caps in the Chiantelassa '219 patent, as this would require a corresponding rotation of the swash plate control mechanism. There is no suggestion in either cited reference of a combination that would provide each of the elements of claim 7.

Claims 1 and 12 have been amended to require that the first pump chamber have a first opening extending in a first direction, the second pump chamber has a second opening extending in a second direction, and a gear chamber is formed in the housing and having a third opening extending in a third direction perpendicular to the first and second directions. Such a structure is not shown in either the '219 or Ohashi '856 patents. There is no separate gear chamber formed in the housing of the Ohashi '856 patent, as that patent shows one of the pump shafts acting as

the input shaft. The input shaft in the '219 patent drives a set of gears but that gear housing does not have any opening perpendicular to the first and second openings.

To establish a prima facie obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. MPEP § 2143.03 (quoting *In re Royka*, 490 F.2d 981 (CCPA 1974)). Given that the independent claims 1, 7 and 12 as amended include a combination of elements that are not taught or suggested in these references, these claims and the claims which depend therefrom are now allowable.

Applicant offers the following remarks regarding the various informalities and objections raised by the Examiner.

Information Disclosure Statement

The Examiner has objected to the Information Disclosure Statement under 37 C.F.R. 1.98(a)(2) for failure to provide copies of certain foreign references. However, applicant was not required to provide such references and therefore traverses this objection. Copies of the information specified in §1.98(a) are required to be provided unless “(1) the earlier application is properly identified in the Information Disclosure Statement and is relied on for an earlier effective filing under 35 U.S.C 120; and (2) the Information Disclosure Statement submitted in the earlier application complies with paragraphs (a)-(c) of this section.” C.F.R. §1.98(d).

The Information Disclosure Statement submitted in this application on March 26, 2004 properly identifies U.S. Patent Application Serial No. 10/175,206 filed June 19, 2002, which is the application being relied upon for an earlier effective filing date under 35 U.S.C §120. The Information Disclosure Statement submitted in the earlier application, Serial No. 10/175,206 (now U.S. Patent No. 6,705,840) was in compliance with §1.98. This earlier Information

Disclosure Statement was submitted on August 30, 2002 and included copies of the foreign references.

Therefore, it is respectfully submitted that the Applicant has complied with the requirements of §1.98 and it was not required to submit copies of these foreign references. Copies are enclosed for the Examiner's convenience with this Response. It is requested that these references be considered at this time.

Drawings

The Examiner objected to Figs. 2 and 3 due to minor typographical errors. Replacement drawing sheets showing these changes of reference numerals "37b" and "20b" on the right side of Fig. 2 and numerals "32b" and "33b" on the right side of Fig. 3 are enclosed. A marked-up copy showing the changes circled in red is enclosed for the Examiner's convenience. No new matter has been added by these replacement drawings. It is respectfully requested that these amended drawings be accepted in this application.

Specification

The specification has been amended to correct the informalities noted by the Examiner on page 3 of the Office Action. In addition, the first paragraph has been amended to reflect the status of the parent application. No new matter has been added by these amendments.

Claims

Claim 1 has been amended to correct the informality with the term "pump shafts" on line 14.

It is believed that Applicant has addressed all of the outstanding matters and it is requested that this application be granted a Notice of Allowance at the earliest possible date. Please contact the undersigned attorney if there are any questions.

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Certificate of Mailing: The undersigned hereby certifies that this document and its enclosures are being sent via First Class Mail, postage prepaid, to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 this ____ day of August, 2005.

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